

**United States District Court
Central District of California**

ROBERT JOSEPH YRIGOYEN,

Case No. 2:19-cv-00295-ODW(AGRx)

Plaintiff,

**ORDER REMANDING ACTION,
AND DENYING AS MOOT
MOTION TO DISMISS [12],
MOTION TO STRIKE [14], AND
MOTION TO REMAND [15]**

v.
ARTHREX, INC.; GLENN J. HUBER,
M.D.; BEACH DISTRICT SURGERY
CENTER LP; COASTAL ORTHO f/k/a
TORRANCE ORTHOPAEDIC &
SPORTS MEDICINE GROUP; and DOES
1-10, inclusive.

Defendants.

I. INTRODUCTION

On January 14, 2019, Defendant Arthrex, Inc. (“Arthrex”) removed this products liability/medical malpractice action to federal court based on alleged diversity jurisdiction. (Notice of Removal (“Notice”), ECF No. 1.) After reviewing Plaintiff Robert Yrigoyen’s Complaint, it is clear that some of the Defendants—namely Glenn J. Huber, M.D. (“Huber”), Beach District Surgery Center LP (“BDSC”), and Coastal Ortho (“Coastal”)—are not diverse from Yrigoyen, and thus

1 the Court lacks subject matter jurisdiction. Consequently, this action is **REMANDED**
2 to state court.¹

3 II. FACTUAL BACKGROUND

4 This products liability and medical malpractice lawsuit arises from surgery to
5 Yrigoyen's shoulder using Arthrex's SwiveLock Device. (Compl. ¶ 42, ECF No. 1-
6 1.) Defendant Huber performed the surgery; Defendant BDSC owns and operates the
7 surgery center where Yrigoyen's surgery occurred; and Defendant Coastal owns and
8 operates the health care facility responsible for overseeing Yrigoyen's care. (*Id.*
9 ¶¶ 4-8; Notice ¶¶ 24-26.) Yrigoyen alleges that Huber, BDSC, and Coastal breached
10 their duty of care as to his medical treatment and that the SwiveLock Device
11 fractured, requiring removal from his shoulder. (Compl. ¶¶ 48-50, 131-41.)

12 Yrigoyen is a citizen of California. (Compl. ¶ 1.) Arthrex is a Delaware
13 corporation with its principal place of business in Florida. (Compl. ¶ 2.) Defendants
14 Huber, BDSC, and Coastal are all citizens of California. (Compl. ¶¶ 4, 5, 7.) On
15 November 14, 2018, Yrigoyen filed this action in the Los Angeles County Superior
16 Court, case number 18STCV04956.² (*See id.*; Notice ¶ 11.) Arthrex was served on
17 December 13, 2018. (Notice ¶ 11.) On January 14, 2019, Arthrex removed the action
18 to this Court. (*See Notice.*) Arthrex did not obtain consent for removal from
19 Defendants Huber, BDSC, and Coastal, but alleges consent is not required because
20 they are not properly joined. (Notice ¶ 12.)

21 III. LEGAL STANDARD

22 Federal courts have subject matter jurisdiction only as authorized by the
23 Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *see also Kokkonen v.*
24 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit filed in state court

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26 ¹ After carefully considering Yrigoyen's Complaint, the Court deems the matter appropriate for *sua*
27 *sponete* decision. *United Inv'r's Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 967 (9th Cir.
2004).

28 ² On May 14, 2018, Yrigoyen filed a similar action in the Los Angeles County Superior Court, but
voluntarily dismissed that action before Arthrex appeared. (Notice ¶ 10.)

1 may be removed to federal court only if the federal court would have had original
2 jurisdiction over the suit. 28 U.S.C. § 1441(a). Federal courts have original
3 jurisdiction where an action arises under federal law, or where each plaintiff's
4 citizenship is diverse from each defendant's citizenship and the amount in controversy
5 exceeds \$75,000. *See id.* §§ 1331, 1332(a).

6 The removal statute is strictly construed against removal, and “[f]ederal
7 jurisdiction must be rejected if there is any doubt as to the right of removal in the first
8 instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party seeking
9 removal bears the burden of establishing federal jurisdiction. *Id.* The court may
10 remand the action *sua sponte* “[i]f at any time before final judgment it appears that the
11 district court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c); *United Inv'r's
12 Life Ins. Co.*, 360 F.3d at 967.

13 IV. DISCUSSION

14 Arthrex invokes diversity as the basis for the Court's subject matter jurisdiction.
15 (Notice ¶¶ 20–26.) The Supreme Court “ha[s] consistently interpreted § 1332 as
16 requiring complete diversity: In a case with multiple plaintiffs and multiple
17 defendants, the presence in the action of a single plaintiff from the same State as a
18 single defendant deprives the district court of original diversity jurisdiction over the
19 entire action.” *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553
20 (2005). Here, Yrigoyen alleges that he is a California citizen and that Huber, BDSC,
21 and Coastal are all also California citizens. (Compl. ¶¶ 1, 4, 5, 7.) Arthrex does not
22 argue otherwise. (See Notice ¶¶ 24–26.) There is no complete diversity.

23 However, Arthrex argues that the Court should discount the citizenship of
24 Huber, BDSC, and Coastal because they were improperly joined to Yrigoyen's
25 Complaint. (*Id.*) “An exception to the requirement of complete diversity exists where
26 it appears that a plaintiff has fraudulently joined a ‘sham’ non-diverse defendant. . . .
27 [A] non-diverse defendant is said to be fraudulently joined where ‘the plaintiff fails to
28 state a cause of action against a resident defendant, and the failure is obvious

1 according to the settled rules of the state.”” *Sanchez v. Lane Bryant, Inc.*, No. 2:15-
2 cv-04247-CAS (ASx), 2015 WL 4943579, at *2 (C.D. Cal. Aug. 17, 2015) (quoting
3 *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987)) (citation omitted);
4 *see also Padilla v. AT&T Corp.*, 697 F. Supp. 2d 1156, 1158 (C.D. Cal. 2009) (“[A]
5 non-diverse defendant is deemed a sham defendant if . . . the plaintiff could not
6 possibly recover against the party whose joinder is questioned.”). There is a strong
7 presumption against fraudulent joinder, and thus “[f]raudulent joinder must be proven
8 by clear and convincing evidence.” *Hamilton Materials, Inc. v. Dow Chem. Corp.*,
9 494 F.3d 1203, 1206 (9th Cir. 2007). “Merely showing that an action is likely to be
10 dismissed against the alleged sham defendant does not demonstrate fraudulent joinder.
11 If there is any possibility that the state law might impose liability on a resident
12 defendant under the circumstances alleged in the complaint, or in a future amended
13 complaint, the federal court cannot find that joinder of the resident defendant was
14 fraudulent, and remand is necessary.” *Revay v. Home Depot U.S.A., Inc.*, No. 2:14-
15 cv-03391-RSWL (ASx), 2015 WL 1285287, at *3 (C.D. Cal. Mar. 19, 2015) (internal
16 citations omitted); *see also Hunter v. Philip Morris USA*, 582 F.3d 1039, 1044 (9th
17 Cir. 2009).

18 Yrigoyen asserts claims against Huber, BDSC, and Coastal for medical
19 malpractice and negligent misrepresentation. (Compl. ¶¶ 131–51.) He also asserts a
20 claim for negligence against BDSC. (*Id.* ¶¶ 58–67.) Arthrex argues that Huber,
21 BDSC, and Coastal are fraudulently joined because the claims against them fail as
22 matter of law as they are time-barred, inadequately pled, and Huber, BDSC, and
23 Coastal are procedurally misjoined. (Notice ¶¶ 27–44.) Arthrex also argues that
24 Yrigoyen is barred from suing Huber, BDSC, and Coastal because Yrigoyen’s counsel
25 in a prior action discussed suing only Arthrex in federal court. (Notice ¶¶ 27–29.)

26 The Court disagrees. First, reasonable minds could differ as to when Yrigoyen
27 knew or should have known the cause of his injury. Next, even if Yrigoyen’s claims
28 are inadequately pled, it is at least possible that state law would impose liability on

1 Huber, BDSC, and Coastal under the circumstances described in the Complaint or in a
2 future amended complaint. Further, Yrigoyen's claims against Arthrex, Huber,
3 BDSC, and Coastal arise out of the same event: Yrigoyen's shoulder surgery and use
4 of the SwiveLock Device. Finally, even if Arthrex and Yrigoyen had a binding
5 agreement to litigate in federal court, that does not overcome any jurisdictional
6 defects.

7 Accordingly, Arthrex simply has not shown by clear and convincing evidence
8 that there is no possibility whatsoever of a jury finding Huber, BDSC, and Coastal
9 liable under at least one of the theories Yrigoyen alleges. *See Ontiveros v. Michaels*
10 *Stores, Inc.*, No. CV 12-09437 MMM (FMOx), 2013 WL 815975, at *9 (C.D. Cal.
11 Mar. 5, 2013) ("[A] non-fanciful possibility of liability" precludes application of the
12 sham-defendant doctrine "even where the plaintiff's claim appear[s] 'relatively
13 weak.'"). Therefore, this Court cannot find that joinder of Defendants Huber, BDSC,
14 and Coastal was fraudulent, and the Court cannot discount their citizenship.
15 Accordingly, the Court lacks subject matter jurisdiction and remand is necessary.³

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26 ³ This Order should not be construed as precluding the possibility of summary judgment in favor of
27 any Defendant. The fraudulent joinder analysis is distinct from the summary judgment analysis. *See*
28 *Amarant v. Home Depot U.S.A., Inc.*, No. 1:13-cv-00245-LJO (SKOx), 2013 WL 3146809, at *6–13
(E.D. Cal. June 18, 2013).

V. CONCLUSION

For the reasons discussed, the Court **REMANDS** the action to the Los Angeles County Superior Court, Case No. 18STCV04956.

As the Court finds it lacks subject matter jurisdiction and must remand, the Court **DENIES AS MOOT** Arthrex's Motion to Dismiss (ECF No. 12), Arthrex's Motion to Strike (ECF No. 14), and Yrigoyen's Motion to Remand (ECF No. 15).

The Clerk of the Court shall close the case.

IT IS SO ORDERED.

February 6, 2019

**OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE**